IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.150 OF 2006
WITH
CIVIL APPLICATION NO.193 OF 2006

Umashankar V.Vishwakarma. ..Appellant.

V/s.

Municipal Corpn.for Gr.Bombay. ..Respondent.

Mr.Ashok K.Mishra for appellant.

Mrs.Geeta Joglekar for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 28, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Ms.Joglekar waives notice for the respondent Corporation.

4. As short question is involved, appeal is taken up for hearing forthwith for final disposal by consent.

5. This appeal from order takes exception to the order passed by the City Civil Court, Greater Bombay

dated 17th January, 2006 passed below Notice of Motion Nos.2449 of 2005 and 2985 of 2005. By this common order both the Notice of Motions have been dismissed. The only discussion to pass order of dismissal on both the notice of motion can be discerned from the paragraph-3 of the impugned judgment which reads thus:

> "3. Heard the Ld.Counsel for the Plaintiff and the Defendants BMC. Adv.Shri Shingade for BMC, inviting attention to the interim order dated 04.08.2005 submitted that the work of drainage is completed considering the interest of the public at large and nothing remained to be done. My Ld.Predecessor by the said order already refused ad-interim relief. On perusal the record, it is seen, work of drain is already completed by the corporation and nothing remained to be restrained. No prima-facie case is made out by the plaintiff. Consequently motions deserve to be dismissed and hence the order:
>
> ORDER
>
> Notice of Motion No.2449/05 and 2985/05 stand dismissed."

6. So far as the reasons recorded in paragraph-3 of the impugned order is concerned, that will be just reason for dealing with Notice of Motion No.2449 of 2005 which was for relief of temporary injunction during the pendency of the suit. However, by no standards, that discussion will be of any avail with

reference to the relief claimed in Notice of Motion No.2985 of 2005 by the appellants/plaintiffs, in particular paragraph-b thereof. Paragraph-b of the said Notice of Motion prays for the following relief:

> "(b) that this Honourable Court be passed mandatory order and directions directing the Defendants, their officers, servants, agents to demolish the drainage which is made illegal, unauthorised and contrary to the statements dated 5th April, 2005 with further directions to restore the drainage line as it was earlier i.e. flowing direction from West to East i.e. situated at Chawl No.127, M.H.B.Colony, Gate No.7, Gaikwad Nagar, Malwani, Malad(West), Mumbai 400 095."

7. In other words, the court below has completely glossed over the core issues raised on behalf of the appellant/plaintiff in terms of the prayer clause(b) of the Notice of Motion No.2985 of 2005. There is absolutely no adjudication of the said grievance by the trial judge in the impugned Judgment. If it is so, the only course open to this court is to set aside the impugned order dismissing the Notice of Motion No.2985 of 2005 and instead restore the said notice of Motion to the file of the trial Court for being decided on its own merit in accordance with the law. All questions in that behalf are left open.

8. Parties may appear before the trial Judge on 17th March, 2006 when the Trial Judge will take up the notice of Motion No.2985 of 2005 and pass appropriate directions, as may be advised, to ensure that the said notice of Motion is disposed of expeditiously.

9. Appeal partly allowed on the above terms. In view of this order civil application disposed of accordingly.